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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
	)	

To: The Commission

COMMENTS OF COX COMMUNICATIONS, INC.

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May 16, 1996

SUMMARY

The requirements governing the relationships among telecommunications carriers in Sections 251 and 252 form the heart of the 1996 Act. The future of the local telephone market depends on the Commission adopting rules that implement the Congressional intent, expressed through those provisions, to foster facilities-based competition. In these comments, Cox proposes a framework that appropriately differentiates the pricing and costing standards for the three methods of competition that Congress envisioned, while retaining the historical role of the States in telecommunications regulation.

Under Cox's framework, a competitor can provide service in three ways. First, it can serve customers entirely through its own facilities, in which case it only needs to obtain reciprocal transport and termination under Section 251(b)(5) from other local exchange carriers. Second, it can provide service partly through facilities, such as loops, leased from an incumbent LEC, in which case it purchases those services under Section 251(c) and also — to the extent that it originates traffic — obtains reciprocal transport and termination under Section 251(b)(5). Third, it can resell the retail services of another LEC, in which case it obtains those services under Section 251(b)(1) or Section 251(c)(4).

Consistent with the Congressional preference for facilities-based competition, Cox proposes specific cost standards for reciprocal transport and termination and for lease or sale of unbundled elements from incumbent LECs, using the concept of upper and lower bounds described in the Notice. The compensation for reciprocal transport and termination should be bounded on one end by the forward looking long run incremental cost, which excludes all common costs and overhead, of the additional capacity required to accommodate a carrier

and on the other by "bill and keep" arrangements. The charges for unbundled elements should be governed by a more flexible standard, limited on one end by forward looking total service long run incremental cost and on the other by fully distributed cost. Voluntary negotiations would proceed under this framework. The States also would have the power to mandate charges for reciprocal transport and termination and for unbundled elements within these federally-established boundaries. This approach implements the Congressional preference for facilities-based competitors by making the differentiated cost standards in Section 252(d) concrete and by assuring that compensation for reciprocal transport and termination reflects only the "additional costs" it causes. It also maintains the important State role in determining the costs associated with common carrier facilities and services, as Congress intended.

Adopting a federal framework for implementation of Sections 251 and 252 should be part of a broader Commission effort to increase the likelihood of successful negotiations between new competitors and incumbents. Cox's proposed framework creates more positive bargaining incentives by rebalancing the power of incumbent LECs and new entrants in the negotiating process. The Commission also should adopt other rules that encourage successful negotiations, including the imposition of federally-mandated charges based on appropriate cost proxies in cases of negotiation failure, provisions for interim compensation during negotiation and State arbitration periods, and a requirement that all arbitrations conform to the cost boundaries that the Commission establishes. These and other measures to encourage successful negotiations are particularly consistent with the intent of the 1996 Act because they avoid inefficiency, create appropriate bargaining incentives and reduce the costs of regulatory intervention.

Finally, the Commission must maintain the regulatory distinctions that Congress adopted in the 1996 Act. Congress made these distinctions intentionally, based on variations in the markets that different carriers serve and in the market power they wield. While markets may evolve over time, they have not done so in the three and one-half months since enactment. The Commission thus has no authority at this time to disturb the statutory differences in rights and obligations of telecommunications carriers, LECs, incumbent LECs and CMRS.

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COMMENTS OF COX COMMUNICATIONS, INC.

Cox Communications, Inc. ("Cox"), by its attorneys, hereby submits its comments in response to the Commission's Notice of Proposed Rulemaking in the above-referenced proceeding.[1/]

I. INTRODUCTION

This is the most important proceeding the Commission will undertake as it implements the Telecommunications Act of 1996.[2/] This proceeding will set the parameters under which local telephone competition will develop -- or will be stunted. Cox has been a pioneer in the development of new communications technologies and has made aggressive plans to be a competitor in the telephone marketplace. The success of those plans, however, depends upon implementation of the 1996 Act so that the underlying Congressional goal of enabling the development of facilities-based local telephone competition is achieved.

1/ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Notice of Proposed Rulemaking, CC Docket No. 96-86, FCC 96-182, rel. Apr. 19, 1996 (the "Notice").

2/ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (the "1996 Act").

Accordingly, Cox urges the Commission to take the following specific steps. First, it should adopt national policies to implement the substantive and procedural requirements of new Sections 251, 252 and 253 of the Communications Act. Second, while negotiated agreements may vary from these policies, State arbitrations should be bound by the policies adopted by this Commission. Third, the Commission's policies should set boundaries for acceptable costs for resale, unbundled elements and reciprocal transport and termination that reflect the three distinct cost standards that Congress adopted in Section 252(d). Fourth, the Commission should ensure that incumbent carriers do not restrict the technical terms of interconnection. Fifth, the Commission should require the use of bill and keep compensation for transport and termination during the pendency of interconnection negotiations. Sixth, the Commission should adopt specific procedures for State deliberations under Section 252. Seventh, the Commission should adopt rules under Section 253 to prevent the erection or retention of barriers to competition and finally, the Commission should specify enforcement procedures and specific remedies for violations of the rules adopted in this proceeding.[3]

A. Cox Is the Kind of Aggressive Competitor that Can Bring the Benefits of Competition to the Local Telephone Marketplace.

Cox has a particularly strong interest in this proceeding. During the last century, Cox Enterprises has participated in virtually every expansion of the communications marketplace. And, once again, it plans to be a pioneer in the offering of new telecommunications which will be of enormous consumer benefit. However, future plans will depend to a very large degree on the Commission's implementation of a uniform national interconnection policy.

3/ Cox has appended proposed rules to these comments that address these points.

Since the enactment of the original Communications Act in 1934, Cox and its affiliated companies have been pioneers in the development of the American communications industry. James M. Cox, the founder of Cox's parent company, established WHIO-AM, Dayton, Ohio in that year. Later, Cox companies established several other broadcast stations, including WSB-FM and WSB-TV in Atlanta in 1948, the first FM and television stations in the South. Cox still operates all of these stations and others across the country.

Cox also was an early provider of cable television service, beginning in 1962. Cox is now the fifth largest cable operator, with major operations in Arizona, California, Connecticut, Louisiana, Nebraska, Rhode Island and Virginia. Cox cable facilities pass more than 5.1 million homes nationwide.

Cox has long been involved in the telecommunications marketplace as well. Cox was a participant in the cellular licensee that operated the original St. Louis MSA non-wireline system. More than ten years ago, Cox was the first company to use cable plant to transmit interstate telecommunications, providing early competition in the interstate access portion of the local exchange market.[4/] In 1993, Cox became the first cable company to recognize the possibilities for competing with local telephone companies when it acquired a controlling interest in Teleport Communications Group, the leading competitive access provider.[5/]

Cox demonstrated its commitment to new telecommunications businesses in the Commission's Personal Communications Service ("PCS") proceedings. Cox developed

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4/ See, e.g., Commline, 102 F.C.C.2d 110 (1985), vacated as moot, 1 FCC Rcd 561 (1986).

5/ While Cox continues to hold a significant interest in Teleport, it now shares ownership with Tele-Communications, Inc., Comcast Corporation and Continental Cablevision.

technologies to permit the integration of cable television plant into PCS infrastructure. It demonstrated this capability to the Commission and the world with the nation's first PCS call over cable plant on February 12, 1992. For its groundbreaking efforts, Cox was awarded a PCS pioneer's preference license for the Los Angeles-San Diego MTA, where it will begin commercial service later this year.

Today, Cox's commitment to compete in the telecommunications marketplace continues. Cox is a partner in Sprint Spectrum, which has been licensed for PCS markets serving 180 million Americans. Along with the Los Angeles-San Diego MTA license, Cox also holds a PCS license for the Omaha, Nebraska MTA. Through Sprint Spectrum and on its own, Cox expects to compete vigorously in the PCS market, both for traditional wireless customers and for customers who will use PCS to replace their current landline service.

Cox also has implemented the most aggressive program in the cable industry to upgrade its cable systems in order to expand its video offerings and to provide new telecommunications and data services. Cox has deployed fiber to a higher percentage of its customers than any other cable operator. More than half of the homes it passes have high capacity cable systems and at least 70 percent of its customers will have high capacity systems by the end of this year.[6] More than a third of all the homes Cox passes will be telecommunications capable by the end of 1996, and Cox expects to have such capability available to 2.5 million homes by the end of 1997.

6/ See Rich Brown & Richard Tedesco, Promise v. Performance, BROADCASTING, Apr. 29, 1996, at 11, 12. In this context "high capacity" refers to cable systems with capacity of 550 MHz or more.

The Cox example is one of the reasons that Vice President Gore told the recent National Cable Television Association convention that "the cable industry is poised to use its existing — and emerging — infrastructure to help create competition in the local phone market[.]" Indeed, Cox expects to take up the Vice President's "challenge . . . to take advantage of the fact that [it is] the second wire that passes every home . . . . [and] to use the financial incentives in the new telecommunications bill to make advanced, two-way broadband communications available" wherever it serves.[7/]

Cox's aggressive upgrade plans are predicated on its emergence as a strong facilities-based competitor in the local telephone marketplace. Indeed, in March Cox filed applications for State certification to provide competitive local telephone service in both California and Virginia.

However, the success of Cox's entry into local telephony — and the benefits consumers will reap from competition — will depend heavily on the rules the Commission adopts in this proceeding. If the Commission follows the dictates of Congress and adopts clear, national standards for compliance with the substantive and procedural requirements of Sections 251, 252 and 253, then competition will flourish and consumers will benefit. The Commission now has the enormous opportunity and responsibility to define adequately the obligations of competitors, incumbents and state public utility commissions so that long term competition can flourish. If this opportunity is missed then facilities-based competition will be in doubt. Cox is encouraged by much in the Commission's Notice and urges the

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7/ Prepared remarks of Vice President Al Gore, National Cable Television Association Convention, Los Angeles, Cal., Apr. 29, 1996 at 1, 5.

Commission not to waver in its view that national guidelines promote the purposes of the 1996 Act.[8/]

B. The 1996 Act Contains Several Essential Principles that the Commission Must Maintain in the Rules Adopted in this Proceeding. (Notice Section II.A.)

The intent of the 1996 Act is stated plainly in the very first sentence of the Conference Report:

> to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition[.][9/]

Indeed, this intent is reified in the basic provisions of the 1996 Act. Moreover, it is apparent from these provisions that Congress has expressed a policy preference for the development of *facilities-based* competition, not just competition by any possible means. Congress also intended for competition to emerge swiftly and without uncertainty in the wake of enactment. The Commission is bound to put these Congressional policies into effect.

The preference of the Federal Government for facilities-based competition is expressed in many ways. The Congress has expressed it in the legislative history noted above and in its admonition to "accelerate rapidly private sector deployment of advanced telecommunications and information technologies."[10/] As the Notice recognizes, the 1996

8/ Notice at ¶ 26.

9/ S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1 (1996) (the "Conference Report").

10/ Id.

Act also focuses on the development of new technologies and true consumer choice in telecommunications services.[11/] The Administration has expressed its own desire for facilities-based competition by encouraging cable operators to use their ubiquitous "second wire" to compete with incumbent local exchange carriers.[12/]

It is especially telling that in-region BOC entry into the interexchange marketplace is premised on the availability of facilities-based competition in both the business and residential marketplace.[13/] It is evident from this requirement that Congress believed that only BOC-independent, facilities-based local competition would create a sufficient constraint on BOC behavior to safeguard the benefits of competition to the public once the BOCs enter the interexchange market.

Finally, the strongest expression of the Congressional preference for facilities-based competition comes in new Sections 251 and 252 of the Communications Act. As the Conference Report explains, Section 251 is "a new model for interconnection[.]"[14/] This model not only distinguishes between new entrants with no market power and incumbents with enormous market power, but also establishes different cost and price standards for carriers that provide service in any one of three different ways.

11/ Notice at ¶ 2 & n.5 (citing statements of Senator Pressler and Representative Fields).

12/ Congress also has embraced a two-wire strategy, as reflected in the new statutory provisions forbidding the common ownership of a cable system and a local exchange carrier in most markets. See e.g. 47 U.S.C. § 652.

13/ See 47 U.S.C. § 271(c)(1)(A) (requiring service to residential and business customers by carriers "exclusively" or "predominantly" using their own facilities).

14/ Conference Report at 121.

In this model, co-carriers are entitled to mutual and reciprocal compensation for the transport and termination of traffic. Moreover, such compensation is based on a statutory cost standard, set forth in Section 252(d)(2), that excludes overheads and other joint and common costs.[15/] Thus, a carrier that serves its customers entirely with its own facilities need not bear any of the overheads or other joint and common costs of the carriers with which it exchanges traffic.

On the other hand, if a carrier eschews the deployment of its own facilities by providing service using unbundled elements obtained from an incumbent LEC under the provisions of Section 251(c), it must either pay for or lease those elements. As set forth in Section 252(d)(1), the price may include some joint and common costs and a profit.[16/] However, once a carrier leases unbundled elements to complete its network, it is entitled to exchange traffic with the incumbent LEC under the lower Section 252(d)(2) cost standard.

Finally, if a carrier chooses to serve customers solely through resale, the prices it pays are not determined either by the cost limitations on transport and termination or by the prices of unbundled elements. Rather, it is entitled to a limited discount if it purchases retail services for resale from an incumbent LEC, and no discount at all if it purchases services for resale from any other LEC.[17/]

15/ 47 U.S.C. §§ 251(b)(5), 252(d)(2).

16/ 47 U.S.C. § 252(d)(1).

17/ 47 U.S.C. § 251(b)(1) (resale obligations of all LECs), (c)(4) (resale obligations of incumbent LECs). Of course, a single carrier may serve some customers solely through its own facilities, some customers partly through unbundled elements leased from an incumbent LEC and some customers through resale of the incumbent LEC's retail services. The prices the carrier pays will depend on the particular arrangements it uses to serve its customers in specific

Congress adopted these different standards quite deliberately. The cost standards for reciprocal compensation, for the sale of unbundled elements and for resale of telecommunications services are described plainly in the 1996 Act. There can be no doubt they are different from one another. As a matter of law, the Commission's rules must maintain those differences when it implements the cost standards.[18/]

Moreover, maintaining a distinction between serving customers on a facilities-based basis, on one hand, and serving customers through the facilities of other carriers, on the other, is good policy. Because exchange of traffic is an exchange of benefits between co-carriers, it is unnecessary — indeed economically inefficient — for either carrier to recover any indirect costs from the other.[19/] This is not the case when a carrier leases unbundled facilities or resells the services of another carrier because the transaction is not reciprocal in nature. Consequently, the Congressional determination that different and less preferential pricing standards should apply to leasing facilities or reselling retail services as opposed to mutually exchanging traffic also is appropriate as a matter of policy.

Rules that implement the basic objectives of the 1996 Act also must assure that negotiations under Sections 251 and 252 lead to prompt, predictable and fair resolutions.

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cases. The 1996 Act does not permit an incumbent LEC, the Commission or the States to limit the ways in which a new entrant mixes reciprocal transport and termination, the leasing of unbundled elements and resale when it serves its customers.

18/ See I.N.S. v. Cardoza-Fonseca, 480 U.S. 421, 430-32 (1987) (where Congress adopts two different standards for agency conduct, especially when it does so in a single legislative enactment, the agency may not treat the two standards as having the same meaning).

19/ Indeed, carriers exchange benefits on *every* call. The originating carrier benefits because its customer is able to make the call; the terminating carrier benefits because its customer is able to receive the call.

One important way to achieve that goal is to limit the range of permissible results from arbitration proceedings. As described in more detail below, closely defined standards for pricing and certain technical and system performance criteria will make it easier for parties to reach resolution in their negotiations because they will know the limits of what they could obtain in an arbitration. Defining permissible results also is an important way to limit the bargaining leverage of incumbent carriers that generally will have little incentive to bargain in good faith. At the same time, specific Commission requirements for acceptable arbitrated outcomes will help to create uniformity in a marketplace that increasingly is becoming regional and national in scope.

Creating an environment in which negotiations are likely to succeed is important to fulfilling basic Congressional goals. Congress plainly expressed a preference for negotiated results in Section 252, which provides for review of negotiated agreements under a simple "public interest" standard.[20/] This preference also is consistent with the intent of Congress to encourage a de-regulatory environment.[21/] Setting parameters will help achieve the goal of successful negotiations because parameters encourage voluntary agreements that will greatly reduce the burden on regulators.[22/]

20/ 47 U.S.C. § 252(e)(2)(A).

21/ Conference Report at 1.

22/ Adopting specific parameters for implementation of Sections 251 and 252 will not preclude carriers from agreeing on other arrangements when they find it advantageous to do so. Specific parameters merely will prevent negotiators from insisting on unreasonable positions in their negotiations because they will know they will not be able to sustain those positions in later State proceedings.

Clearly defined standards also will make it easier for the States to fulfill their substantial obligations under the 1996 Act. If interconnecting carriers and the States are given clear, consistent bounds on the range of acceptable outcomes in interconnection negotiations, they will be better able respectively to reach agreements, direct arbitrations and adjudicate disputes. Such outcomes will fulfill the Congressional mandate to benefit "all Americans by opening all telecommunications markets to competition[.]"[23/]

II. THE COMMISSION SHOULD ESTABLISH SEPARATE BOUNDARIES FOR EACH OF THE THREE DISTINCT PRICE/COST STANDARDS FOR LOCAL SERVICE OPTIONS CREATED BY CONGRESS IN THE 1996 ACT. (Notice Sections II.B. and C and Section III.)

In establishing policies to promote competition for local exchange services, Congress recognized that new competitors will have different strategies for entering the local exchange market and that the success of these strategies will depend, in whole or in part, on the terms under which facilities or services are obtained from incumbent LECs.[24/] Consequently, to facilitate entry by a broad range and number of competitors, Congress recognized three distinct methods new entrants might use to provide competitive local exchange service: entry via resale, entry via purchase of unbundled elements and entry by the operation of a facilities-based network.

These distinct local service options are governed by equally distinct cost standards. For consumers to reap the maximum benefits from competition as Congress intended, the

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23/ Conference Report at 1.

24/ This same recognition is reflected in the Notice at ¶ 9. ("Different entrants may be expected to pursue different strategies that reflect their competitive advantages in the markets they seek to target.")

Commission must establish clear, differentiated allowable cost boundaries for the services or functions delivered by incumbent LECs to their local competitors. These boundaries should reflect the differing costing standards that Congress adopted and should not permit overlap between the cost standards for unbundled elements and the standards for reciprocal transport and termination. Within the bounds established by the Commission, the States can then meet their historic responsibility to determine appropriate costs for specific unbundled elements or for reciprocal transport and termination, provided that their determinations do not exceed the bounds set by the Commission. If, as the Commission has suggested, a strong national framework governing the costs the incumbent can pass onto competing carriers is established, then the promise of the 1996 Act will be fulfilled.

A. Congress Established Three Local Service Options for New Competitors in the 1996 Act. (Notice Sections II.B and C.)

The introduction of competition into the local exchange market is a monumental task. Incumbent LECs have been building ubiquitous local exchange networks for the past century, charging rate of return guaranteed rates and using those telephone ratepayer revenues to fund a massive infrastructure of interconnected loop, switch and transport facilities. Competing local networks will not take another 100 years to develop, but they will not develop overnight. As the Notice explains, Congress recognized that pervasive and sustainable facilities-based competition is the best way to break the incumbent LECs' stranglehold over the local exchange market, but also decided that consumers should not be denied the benefits of competition while new entrants are building competitive networks.[25/] Consequently, in

25/ Notice at ¶ 75.

addition to facilities-based competition, Congress established two alternative ways in which a new entrant in the local exchange market can choose to provide service to a customer — by using unbundled elements of the incumbent's network or through resale of the incumbent's local telephone service.

Congress also recognized that no matter how a competitor chooses to enter the market, it must depend in some way on obtaining services or facilities from the incumbent LEC.[26/] The level of dependence on the incumbent LEC will vary. At one end will be nearly total dependence on resale of the incumbent LEC's residential services. At a middle ground will be dependence on the incumbent LEC to provide for purchase certain unbundled elements. At the other end will be a co-carrier or peer relationship of local networks that must meet to exchange traffic to be terminated to the other network's end user customers. A single carrier may provide service through any combination of these approaches at any given time, depending on the mix of facilities it deploys, the services it provides and the customers it serves.

For each of these situations, Congress established a corresponding set of obligations on incumbent LECs and, in some cases, on competitive LECs. How these obligations are translated from the statute books to the market will determine how quickly the potential for competition in the local exchange market is realized. A translation that throws all incumbent LEC services and facilities into the same pricing standard dims the prospect of real facilities-

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26/ See id. at ¶ 7 ("It is unlikely that competitors will have a fully redundant network in place when they initially offer local service, because the investment necessary is so significant").

based local competition. A translation that is faithful to the intent of Congress, as evidenced in the statute itself, will advance the prospects for facilities-based competition.

While the 1996 Act does not dictate how a new entrant will choose to enter the local telecommunications market, it does prefer that competitors serve end users by building out at least some of their own local facilities, rather than exclusively reselling the incumbent LEC's services. This preference is easily understood in the framework of the 1996 Act: the need to price regulate incumbent LECs is diminished and may disappear over the long term once real, sustainable and facilities-based local competition breaks out. For that reason, the FCC should approach its implementation of the Sections 251 and 252 with great sensitivity to Congressional intent.

1. Facilities-based service. Some new entrants will be able to originate and terminate calls to and from a customer solely over their own facilities, just as incumbent LECs do today. In a competitive market, however, local calls may originate on the network of one carrier and terminate on the network of another carrier. Thus, for a customer of a new entrant to be able to call any other customer in a new entrant's service area, the new entrant must be assured that the incumbent LEC will terminate calls to its customers that originate on the new entrant's network. Without some form of reasonable reciprocal traffic termination arrangement, new entrants would be relegated to niche markets.

FACILITIES-BASED SERVICE

- Entitled to reciprocal transport and termination
- No other charges for interconnection of networks

Congress recognized the importance of mutual and reciprocal traffic termination and transport agreements to the development of facilities-based competition in Section 251(b)(5), which requires that all LECs "establish reciprocal compensation arrangements for the transport and termination of telecommunications."[27] Cox supports the Commission's conclusion that reciprocal compensation for the transport and termination of traffic is the key to developing the seamless network of networks envisioned by the 1996 Act.[28] Through reciprocal compensation arrangements for the mutual exchange of traffic, a customer will be able to make or receive calls to or from any other customer in its carrier's service area even if the other party uses a different local carrier

The reciprocal compensation requirement recognizes that the relationship between competing local exchange providers is a co-carrier, peer network relationship. As described more fully below, Section 251(b)(5) covers the entire transaction between carriers that exchange local traffic. The statute does not contemplate the incumbent LEC collecting a separate "interconnection charge" from peer networks, or for that matter any other kind of additional charge beyond the mandated mutual and reciprocal compensation for transport and termination. Typically, transport and termination interconnection would occur at midspan and meet points where the interconnecting parties share their proportionate cost of meeting.

27/ 47 U.S.C. § 251(b)(5).

28/ Notice at ¶ 6.

2. Service provided using unbundled elements While some new entrants will choose to provide service over their own facilities, other competitors will not immediately want to build their own facilities to originate or terminate calls to or from the customers they seek to serve. They will need interconnection to and use of network elements of the incumbent LEC. To facilitate the rapid entry of new competitors (who may be in the process of building their own networks or who may have some, but not all the elements they need to serve local customers), the 1996 Act requires incumbent LECs to interconnect with these carriers and to offer their network elements on an unbundled basis.

UNBUNDLED ELEMENTS

- Used to complete a network
- Completed network entitled to reciprocal transport and termination under § 251(b)(5)

Specifically, under Section 251(c)(2), incumbent LECs are obligated to provide "interconnection with the local exchange carrier's network."[29/] This interconnection must be made available at any technically feasible point in the LEC's network, must be equal in quality to that which the LEC provides itself and must be provided on rates, terms and conditions that are just, reasonable and nondiscriminatory. In addition, Section 251(c)(3) imposes on incumbent LECs the duty to provide "nondiscriminatory access to network elements on an unbundled basis . . . on rates, terms and conditions that are just, reasonable and nondiscriminatory."[30/]

29/ 47 U.S.C. § 251(c)(2).

30/ 47 U.S.C. § 251(c)(3).

The intent of these provisions is to permit a new competitor to purchase only those elements of the incumbent LEC's network it needs to complement its existing facilities to create end-to-end networks.[31/] For example, a CAP that seeks to provide local service to residential customers in areas where it does not have facilities can buy local loop facilities from the incumbent LEC. It would not also have to purchase switching, if switching was not an element that it required from the LEC. Congress recognized that absent an unbundling requirement incumbent LECs would require potential competitors to pay for more service than they need, thereby limiting the value of interconnection and reducing the potential for competition. Requiring that elements of the incumbent's network be made available on an unbundled basis will make it more feasible for a new entrant to provide service using a mix of its own facilities and the incumbent's facilities.[32/] Once these networks have the ability to provide end-to-end service locally, competitors that purchase unbundled elements to complete their networks or network functionality are entitled, as described below, to the benefits of Section 251(b)(5) and 252(d)(2) for the exchange of traffic with other local carriers.

31/ Notice at ¶ 75 ("Together, sections 251(c)(3) and 251(d)(2) foster competition by ensuring that new entrants wishing to compete with incumbent LECs can purchase access to those network elements that they do not possess, without paying for elements that they do not require.")

32/ Cox suggests five major categories as a minimum baseline for unbundled elements: Loops, Switching Elements, Transport Elements, Signalling Elements and Ancillary Systems.

3. Resale of service. Although Congress expressed a preference for facilities-based competition, it recognized that some new entrants would compete in the local market by reselling the local exchange services of other carriers, particularly the incumbent LEC's services. The availability of this resale option facilitates rapid entry by new competitors in the local market, including facilities-based competitors seeking to expand their service area outside the range of their facilities.[33]

RESALE

- Discounts from retail price only if purchased from incumbent LEC
- Transport and termination included in price
- No right to collect access charges

Section 251(b)(1) requires all local exchange carriers to permit their retail services to be resold. In addition, incumbent LECs are required to make services available for resale at "wholesale" rates under Section 251(c)(4). The purpose of this additional wholesale rate requirement for incumbent LECs is to counter their incentive to price services for resale at a level that eliminates any potential for a reseller to make a profit reselling local service. Unlike carriers in markets with a number of competing networks, where each has an incentive to increase the traffic on its network by offering attractive resale rates, an incumbent LEC can effectively avoid competition by offering resale at unattractive rates because there will not be another facilities-based carrier from which the reseller can buy local exchange service.[34] This will be particularly true in the early stages of competition,

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33/ See Notice at ¶ 10.

34/ For this reason, there also is no need to impose wholesale pricing requirements on non-incumbent LECs. Non-incumbent LECs will be unable to avoid competition and are likely to welcome the additional traffic resellers can provide.